MULHOLLAN, EXR. *vs.* THOMPSON AND WIFE.

Under our statute, a widow is not entitled to dower in the choses in action belonging to the estate of her deceased husband—nor does the court concede that she is entitled to dower in land warrants.

Appeal from Union Circuit Court.

In the month of February, 1850, Charles T. Thompson, and his wife, Ann E. Thompson, formerly Ann E. Mulhollan, filed a petition in the Probate Court of Union county, stating that the said Ann E. was entitled to one-half of about $1,400, as dower in the estate of Thomas J. Mulhollan, deceased, her former husband, in addition to the amount of dower previously assigned to her out of said estate. That the executor of her late husband had returned the fund out of which she now claimed dower as a

debt due from Albert Rust, when the fact was that the amount of $815, returned as a demand or chose in action against said Rust, was money placed by the said Thomas J. Mulhollan, in his lifetime, in the hands of said Rust, as his agent, to invest in land warrants, which was accordingly done; and that Rust held seven of the warrants in his hands, as such agent, and handed them over to the executor of Mulhollan, who sold them for $200 each. That said Ann E. was entitled to dower in said land warrants, as part of the personal estate of her late husband, and the executor having sold them, she claimed dower in the proceeds.

Nathaniel M. Mulhollan, executor of Thomas J. Mulhollan, contested the petition, and the case was heard before the probate judge on the following testimony:

Albert Rust testified, that, during the lifetime of said Thomas J. Mulhollan, he placed in the hands of witness, in a sight draft and in cash, some seven or eight hundred dollars, the precise amount not recollected, to be invested by witness on account of Mulhollan, and for which witness gave his receipt to account to him. That said sum was a general and not a special deposit, and was by witness placed among his other finds. That he was to invest said sum on speculation for Mulhollan, and to account and pay over to him the principal sum together with the profits of its investment. Witness bought a number of land warrants, amounting to more than said sum would have purchased, but did not invest the identical sum received from Mulhollan in land warrants, "but did invest the same sum contained in a large sum, in warrants, which, Mulhollan not being authorized to deal in, witness intended to pay to him the profits of such investment." Said sum was not placed in the hands of witness to be invested in land warrants, or in any specific way, but in any way witness might choose. That, at the time of the death of Mulhollan, witness did not have in his hands or possession any specific funds, cash or personal property belonging to the said deceased; but was merely bound to account to him for said sum and profits thereon. Witness at that time had a number of warrants in hand, but none specially set apart for deceased. He intended to pay deceased the

proceeds of as many warrants as the draft and money placed in his hands would have purchased, or as he did purchase with the aggregate amount thereof. He did not intend or expect to pay deceased in land warrants, because deceased was Receiver in the Land Office, and could not, under his instructions, use them. Some time after the death of Mulhollan, his executor presented the receipt of witness to him, and demanded payment thereof in money, when witness, after explaining to him the purpose for which said sum was placed in his hands, as above stated, paid over and took up said receipt, in land warrants out of the number above referred to. Witness paid executor seven land warrants, in discharge of his receipt, at the price they had cost him, *to wit:* five of them at $111.10, and two at $122.50. That witness was at that time selling warrants, on a credit of twelve months, for two hundred dollars, and when pressed for money, had sold some for cash at one hundred and seventy, and one hundred and seventy-five dollars each. That he felt in honor bound to have paid to deceased, in discharge of his receipt, either money or land warrants, as deceased might have required.

On this testimony, the Probate Court decreed as follows:

"The court finds that the said executor, Nathaniel M. Mulhollan, has received into his possession, since the death of said Thomas J. Mulhollan, seven land warrants, worth $175 each, in the aggregate $1,225; and doth further find that said petitioners in right of said Ann E., are entitled to dower in said land warrants which has not been set off to her by the executor. It is, therefore, ordered, agreed and decreed, that said executor pay over to said petitioners one-half of the said land warrants in full discharge of all further dower: when the money received by Rust from Mulhollan was or if sold, that he pay over the one-half of the proceeds thereof."

The executor excepted, and appealed to the Circuit Court, where the decree was affirmed, and he appealed to this court.

R. M. HARDY, for the appellant. The claim against Rust was a mere chose in action, out of which the widow could take no

dower: when the money received by Rust from Mulhollan was placed among his own, the only remedy was an ordinary action for the money; and even if Mulhollan had a right to the land warrants when purchased, they are nothing more than a chose in action. 5 *Ark.* 614. 3 *Eng.* 9. 2 *Kent* 351. 3 *Bl. Com.* 397.

LYON, for the appellees. The land warrants, when delivered to the executor, were held by him as personal assets of the testator's estate, subject to sale as any personal property belonging to the estate, and the widow is entitled to dower therein. *Dig.* 448, *s.* 21. *Hill's admr. v. Mitchell et al.,* 5 *Ark. Rep.* 608.

Mr. Justice SCOTT delivered the opinion of the Court.

The claim against Rust, in favor of the appellant, that was satisfied by the land warrants in question, was clearly a chose in action, to which the right of dower did not attach within the meaning of our statute, as held by this court in the case of *Hill's ad. v. Mitchell et al.,* (5 *Ark. R.* 60,) which is cited with approbation in its greater scope in the case of *Menefee's ad. v. Menefee et al.,* (3 *Eng. R.* 9). Therefore, although it might be conceded, which we do not, as contended for by the counsel, that land warrants in general were within the statute of dower, as thus expounded, it would be of no avail to the petitioner below, because the claim against Rust was not for land warrants specifically; but was a money demand. If it were otherwise, the rights of creditors would be in a good degree at the mercy of the executor or administrator of an estate.

We, think, therefore, that the judgment of the Circuit Court should be reversed, and the cause remanded, in order that the decree of the Probate Court may be also reversed, and the petition dismissed.